

UNITED STATES CIVIL SERVICE COMMISSION
Washington, D. C. 20415

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Statement of Frederick A. Kistler, Deputy Director,
Bureau of Policies and Standards,
Before the House Subcommittee on Retirement and
Employee Benefits on H.R. 11245,
A Bill Providing for the Payment of Overtime to Certain
Personnel in the Department of Agriculture, Animal and
Plant Health Inspection Service

Mr. Chairman, Members of the Committee:

I appreciate this opportunity to explain the Commission's views on
✓ H.R. 11245.

The Commission is opposed to the enactment of the bill because it would afford preferential treatment to a particular group of employees and create inequities between these employees and professional and other exempt employees in the Federal Government. It has, moreover, all the marks of one of those situations where you fix one thing and then you only have to fix the next with an ever spreading problem.

I would like to take a moment to place this matter in context. For more than 30 years the overtime pay of Federal white-collar workers in general has been governed by a law specifically applicable to them. It was enacted as the Federal Employees Pay Act of 1945 and now is codified as section 5542 of title 5 of the United States Code. At the lower grades, a rate of one and one-half times the basic rate of pay is the mandatory rate for overtime work. At the higher grades, however, not only is the amount of the overtime premium limited, so that employees paid above the

minimum rate of GS-10 receive overtime compensation only at one and one-half times the basic hourly rate for that salary level no matter how high their grade, but the practice is such that overtime pay is not even mandatory. A limitation of this kind was provided in recognition of the fact that, for the most part, employees in the private sector at similar salary levels would fall within one of the groups (that is, professional, administrative, or executive) who are not subject to the FLSA overtime pay requirement. At the middle steps of GS-11, for example, we are talking about an employee earning \$18,000 a year. At the middle steps of GS-13, the salaries are over \$25,000. These categories of employees are employed and paid for a task to be accomplished, not for the hours it takes to perform it. Their salaries presumably are fixed at a level which will appropriately recognize their skills, knowledge, and abilities, as well as the longer hours they may be required to give to their employer.

In 1974, on top of this long established law governing overtime for Federal salaried employees, came the Fair Labor Standards Amendments which extended the coverage of the FLSA to the Federal service. This required making distinctions between Federal employees not previously made; it required the application of new rules and concepts simultaneously with the old. It meant, specifically, that employees would be paid the full time and one-half overtime rate no matter what their salary rate or grade level if they were not exempt as professional, administrative, or executive employees. In the Federal service, and I think we can assume in the private sector, relatively few employees at GS-11 or equivalent salary levels are non-exempt.

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While H.R. 11245 would serve to equate the overtime compensation of certain Department of Agriculture professional employees to that of nonprofessionals who work with them and who are entitled to the full time and one-half overtime rate under the FLSA, its enactment would result in non-uniform overtime pay treatment among professional and other exempt employees of the Federal Government. Although there are some 2000 veterinarians in the program to which the bill applies, the Federal Government has more than a hundred thousand professional employees in grades GS-11 through GS-14. If an attempt were made to achieve uniformity by the extension of this benefit to cover all professional personnel, very substantial costs would be generated.

The existence of a number of employees at these higher grade levels receiving the full time and one-half premium for overtime does not, in our judgment, justify the abandonment of the reduced overtime provision for those employees who are not subject to the Fair Labor Standards Act. One must make some kind of logical distinctions. If a special provision is made for the employees covered by this bill, how does one reasonably contend that all other professional employees are not entitled to the same treatment? And, if, indeed, the Congress saw fit to enact legislation granting all professional employees overtime compensation of this kind, how would one justify the difference between the Federal practice and the general practice in the private sector?

Until the Fair Labor Standards Amendments of 1974 were enacted, General Schedule employees at the same salary level were entitled to the same overtime pay rate. The FLSA introduced distinctions so that a Federal

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employee who is covered by that Act receives a different overtime rate than another at the same salary level who is exempt from it. We should not make the patch work kind of adjustment proposed in this bill since, in our opinion, it will only lead to further inequities, which the Congress would surely be called upon to deal with. Further, enactment of premium pay liberalization such as proposed by H.R. 11245 would be inconsistent with the report of the President's Panel on Federal Compensation. That report recommended that a systematic review of premium pay administration be conducted to determine what premium pay practices are currently justified in the light of practices in the non-Federal sector and any special requirements of the Federal service.

While enactment of this bill would not immediately increase Federal outlays substantially, the consumer would suffer in the market place through increased prices for meat and poultry products. Moreover, if this exception were extended to all higher grade Federal employees the magnitude of its impact on the Federal budget would be significant.

Of primary concern in consideration of this bill should be what is reasonable and equitable compensation for the work performed and whether the work performed by the employees to be covered by H.R. 11245 is significantly different from other occupations to warrant this preferential treatment.

Thank you Mr. Chairman, for this opportunity to appear today. I would be happy to answer any questions you may have.